SUPREME COURT OF THE UNITED STATES.

No. 197.—October Term, 1927.

Interstate Busses Corporation, Appellant, *vs.* William H. Blodgett, Tax Commissioner of the State of Connecticut; Ernest E. Rogers, Treasurer of the State of Connecticut, Frederick M. Salmon, etc., et al.	Appeal from the District Court of the United States for the District of Connecticut.

[February 20, 1928.]

Mr. Justice Stone delivered the opinion of the Court.

The appellant, complainant below, is a Connecticut corporation engaged in the transportation of passengers in motor buses, exclusively in interstate commerce, between Connecticut and points in Massachusetts and Rhode Island. The present suit was brought in the district court for Connecticut to restrain appellees, tax officials of the state, from levying a tax on appellant under a Connecticut statute, Conn. Pub. Acts 1925, c. 254, on the ground that the tax is an unconstitutional burden on interstate commerce. Application to a court of three judges for an interlocutory injunction under Jud. Code § 266 was denied, 19 Fed. (2d) 256, and on final hearing the court dismissed the bill on the merits. The application for the preliminary injunction having been pressed to a determination before the court of three judges, the case is properly here on direct appeal from the final decree of that court. Jud. Code §§ 238, 266; *Smith* v. *Wilson*, 273 U. S. 388; *Clark* v. *Poor*, 274 U. S. 554.

The appellant has already complied with the general statutes of Connecticut requiring the registration of motor vehicles. Part II § 1 of the act in question imposes a tax of one cent for each mile of highway traversed by any motor vehicle used in interstate commerce "as an excise on the use of such highway." By Part II § 4

the proceeds of the tax are to be applied to the maintenance of public highways in the state.

Appellant objects to the tax as an infringement of the paramount power of Congress to regulate interstate commerce or at least as a discrimination against that commerce. It is not denied that a state may impose a registration or license fee on those using motor vehicles in the state, although engaged in interstate commerce, or that the state may impose a reasonable charge for the use of its highways by motor vehicles so employed, *Hendrick* v. *Maryland*, 235 U. S. 610; *Kane* v. *New Jersey*, 242 U. S. 160; *Clark* v. *Poor, supra*, and there is no evidence that the tax here is in itself an unreasonable charge for the privilege. But it is said that the particular scheme of taxation adopted by Connecticut imposes this tax in addition to statutory charges already made for the use of the highways in interstate commerce, and both in purpose and in effect discriminates against appellant and in favor of those operating motor vehicles in intrastate commerce.

The state has adopted a system of financing its highway construction and maintenance under which about 80% of the cost is collected from fees for the registration of motor vehicles and for operators' licenses, from taxes on the sale of gasoline and from fines and penalties for violations of the motor vehicle laws. The balance of the cost is paid from general appropriations by the state legislature and a certain amount received under federal aid legislation. Appellant, it is conceded, pays certain taxes imposed alike on those engaged in intrastate and interstate commerce. These include a personal property tax upon its motor cars used in the state, a registration or license fee for each vehicle so used, and also, it is urged, a tax of two cents a gallon on the sale of gasoline within the state which in practice is absorbed by the consumer in the purchase price.

But no mileage tax like that imposed by Part II § 1 is levied upon those using motor vehicles in intrastate commerce. Instead, Part I § § 2 and 3 of the act under discussion subject all companies engaged in intrastate motor bus transportation to an excise of 3% of their gross receipts less such taxes as they have paid locally on their "real and tangible personal estate." By Part I § 6 this excise is declared to be in lieu of all taxes on intangible personal property. Moreover, those who pay it are exempt from the income tax

of 2% imposed generally on corporations, including, apparently, the appellant. Conn. Gen. Stat., c. 73, as amended. It like the mileage tax is devoted to the maintenance of highways.

To show that the mileage tax is discriminatory appellant first points out the obvious differences between it and the gross receipts tax and, secondly, relies on an uncontradicted allegation in the bill of complaint that, apart from the mileage tax, it already contributes to the maintenance of the highways of the state in the same manner and to the same extent as others in the payment of the personal property tax, the license tax on buses and the shifted gasoline tax.

The two statutes are complementary in the sense that while both levy a tax on those engaged in carrying passengers for hire over state highways in motor vehicles, to be expended for highway maintenance, one affects only interstate and the other only intrastate commerce. Appellant plainly does not establish discrimination by showing merely that the two statutes are different in form or adopt a different measure or method of assessment, or that it is subject to three kinds of taxes while intrastate carriers are subject only to two or to one. We cannot say from a mere inspection of the statutes that the mileage tax is a substantially greater burden on appellant's interstate business than is its correlative, the gross receipts tax, on comparable intrastate businesses. To gain the relief for which it prays appellant is under the necessity of showing that in actual practice the tax of which it complains falls with disproportionate economic weight on it. *General Tank Car Corp.* v. *Day*, 270 U. S. 367; *Hendrick* v. *Maryland, supra; Interstate Busses Corp.* v. *Holyoke Street Ry.*, 273 U. S. 45, 51. The record does not show that it made any attempt to do so.

That appellant is already contributing to highway maintenance is not in itself significant, for the state does not exceed its constitutional power by imposing more than one form of tax as a charge for the use of its highways in interstate commerce. It is for appellant to show that the aggregate charge bears no reasonable relation to the privilege granted.

It is further objected that the provision of the state statute, Part II § 3, authorizing the suspension of registration as a remedy for the nonpayment of the mileage tax, is invalid in any case, since payment of even a lawful tax may not be enforced by the

exclusion of the taxpayer from interstate commerce. *Western Union Telegraph Co.* v. *Massachusetts,* 125 U. S. 530; *St. Louis & Southwestern R. R.* v. *Arkansas,* 235 U. S. 350. And it is not denied that appellees have threatened to invoke § 3 against appellant. But we need not consider here whether the principle relied on goes so far as to prevent a state from excluding from its highways a motor carrier which refuses to pay a charge for their use. Compare *Hendrick* v. *Maryland, supra; Kane* v. *New Jersey, supra; Clark* v. *Poor, supra.* Here the relief sought presupposes that the tax is unconstitutional. That point being determined against appellant we shall not assume that it will persist in its refusal to pay the tax.

Objections of less moment, which we have considered, do not require comment.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.